HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3044 (S/S) year 2001

Dhan Singh Jeena, S/o Chander Singh
Versus
State of Uttaranchal and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision: 01.11.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No. 6

Writ Petition No. 3044 (S/S) 2001

Dhan Singh Jeena, S/o Chander Singh,
R/o Chakerpur, P.S. Khatima,
Distt. Udham Singh Nagar. …… Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Urban Development, Dehradun.
2. Director, Local Bodies, Dehradun.
3. Chairman, Nagar Palika Parishad,
   Khatima, Distt. Udham Singh Nagar.
4. Executive Officer, Nagar Palika Parishad,
   Khatima, Distt. Udham Singh Nagar.

…….. Respondents

Mr. B.S. Khanka, Advocate for the petitioner.
Mr. Sandeep Tandon, Advocate for the respondents.

Date: 1st November 2003

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for issue of a writ, order or direction in the nature of mandamus directing the respondents to release the pension, gratuity, provident fund, dearness allowance, insurance and other retirement benefits in favour of the petitioner.

Brief facts giving rise to the writ petition are that the petitioner was working in the Nagar Palika Parishad for the last 22 years as Peon and was made permanent on the said post on 13th October 1997 issued by the Executive Officer, Nagar Palika Parishad, Khatima, Distt. Udham Singh Nagar.

The petitioner has stated in paragraph 4 of the writ petition that he has retired from the post of Peon on 30th November 2000 and after the retirement, he has not been paid pension, gratuity, provident fund, group insurance and other retirement benefits inspite of various

reminders. At the time of the admission of the writ petition, following order was passed on 23rd May 2001:-

> "Allowed three week's time to file counter affidavit. List after three weeks".

Thereafter on 31.07.2003 another order was passed for payment of pension and gratuity, the same is quoted below:-

> "Heard learned Counsel for the petitioner and learned counsel for Municipality. On 11.7.2003 this Court directed the Executive Officer Nagar Palika to appear before this Court on 31.7.2003 and in case the payment is made before that date he need not to appear. The Executive Officer is present. Learned counsel for respondent Sri Sandeep Tandon has submitted that the pension and gratuity has already been granted to the petitioner and the letter has already been sent to the petitioner and the concerned bank. The petitioner has submitted that he has opened the account in the bank. However, the pension and gratuity sanctioned to the petitioner has not been transferred in the account of the petitioner, because no letter has been issued by the Addl. Director of Local Accounts Department Nainital to the Bank. Addl. Director of Local Accounts Department Nainital is directed to appear before this Court on 13.8.2003 to explain why he has not issued the letter to the bank inspite of the sanction letter of the Commissioner Kumaun Mandal. Regarding the payment of provident fund by the Nagar Palika Parishad the counsel for the Nagar Palika Parishad has submitted that Nagar Palika is facing acute problem because of non-availability of fund. According to the learned counsel for respondent, Dhan Singh is to be paid Rs. 59,991.00 towards Provident Fund and other dues. He has handed over a cheque of Rs. 5000/- to the learned counsel for the petitioner. Rest of the amount shall be paid by Nagar Palika Parishad within a

period of three months. Personal appearance of E.O. Nagar Palika is exempted till further orders."

Shri Sandeep Tandon has filed an application that in compliance of the order passed by this Hon'ble Court dated 31.7.2003 following payments have been made which has been mentioned in paragraphs 2, 3 & 4 of the application, the same are quoted below:-

"2. That it is important to mention here that the total dues of the petitioners was Rs. 59,991.80, regarding the provident fund and other dues.

3. That out of the above dues the respondent Department has already paid Rs. 4,500/- to the petitioner on 1.12.2000 and Rs. 1,000/- on 15.9.2000 in cash. It is clear that on 31.7.2003 the total dues of the petitioner was Rs. 54,491.80. Our of Rs. 54,491.80 the respondent also hand over the cheque of Rs. 5,000/- dated 10.7.2003 to the counsel of the petitioner in the court. For remaining Rs. 49,491.80 dues, the Hon'ble Court grant the three months time to the respondent.

4. That in compliance of the Hon'ble Court order the respondent paid Rs. 30,000/- to the petitioner vide cheques No. 959235, 266752, 095385 dated 28.8.2003, 27.9.2003 and 17.10.2003. It is clear with the above facts that now only Rs. 19,491.80 is balance with the respondent department."

As will appear from the aforesaid facts that the sum of Rs. 19,491.80 is the only balance to be paid to the petitioner.

After hearing both the parties, in my opinion, the pension and gratuity are not bounty, but the same has to be paid immediately after the retirement of the petitioner.

In the State of Kerala & others V/s M. Padmanabhan & others reported in (1985) 1 S.C.C. 429 the Apex Court has held that the pension and gratuity are no longer any bounty to be distributed by the

Government to its employees, but have become valuable rights and property in their hands. The observations of the Apex Court are quoted below:-

> "Pension and gratuity are no longer any bounty to be disturbed by the Government to the employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

The respondents, therefore, are directed to release the balance amount within two months failing which penal interest will be charged from the respondents. Respondents shall pay the balance of the retiral benefits to the petitioner. However, pension amount shall be paid regularly to the petitioner. Entire compliance shall be made within a period of 2 months, failing which penal interest will be charged.

Consequently Writ Petition succeeds and is allowed. There will be no order as to costs.

(Rajesh Tandon, J.)

01.11.2003
Gur.